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August 23, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Mail Stop 1170
Washington, D.C. 20554

Re: IB Docket No. 95-118

Dear Mr. Caton:

Transmitted herewith, on behalf of Teleport Transmission Holdings, Inc. ("TTH"), are an original and four copies of its Comments in the above-referenced proceeding.

Questions and copies of all correspondence should be directed to undersigned counsel.

Very truly yours,

Harsha Krishnan

Enclosure

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Streamlining the International Section 214 Authorization Process and Tariff Requirements	IB Docket 95-118

COMMENTS OF TELEPORT TRANSMISSION HOLDINGS, INC.

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August 23, 1995

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of Streamlining the International Section 214 Authorization Process and Tariff Requirements	IB Docket 95-118

COMMENTS OF TELEPORT TRANSMISSION HOLDINGS, INC.,

Teleport Transmission Holdings, Inc. ("TTH"), by its attorneys, hereby submits its Comments to the Notice of Proposed Rulemaking ("*NPRM*") adopted on July 13, 1995, and released on July 17, 1995. In support of its Comments, TTH respectfully states:

I. Introduction

TTH has two wholly owned subsidiaries that offer international and domestic satellite earth station services through facilities located in the Denver, Los Angeles and New York metropolitan areas. These satellite earth station services include domestic and international voice, video and data transmissions. TTH does not operate satellite space stations, submarine cables or comparable facilities. TTH observes that demand for international telecommunications services has increased dramatically in the last few years. In particular, many more countries are seeking to expand their international telecommunications traffic with the United States. TTH is actively seeking opportunities for expanded international services and for new countries to serve; however, regulatory hurdles, such as the Section 214 authorization procedures (which often require 90 to 120 days to complete) impede implementation of such services. Furthermore, current Section 214 requirements reduce TTH's flexibility to select the most appropriate and economical facilities. The activities of non-dominant carriers such as TTH do not implicate the policy concerns underlying Section 214 because such carriers cannot leverage bottleneck facilities for competitive advantage nor compel captive ratepayers to finance unnecessary or redundant facilities. The current Section 214 authorization process imposes significant market entry barriers on non-dominant carriers, thereby reducing competition and customer choice, without corresponding public benefits. Consequently, TTH supports the *NPRM* proposals to streamline the international Section 214 authorization process and tariff requirements.

II. Global Section 214 Authorizations

The *NPRM* proposes that non-dominant international carriers need only obtain a single Section 214 authorization to provide international services worldwide. In addition, once certificated, such carriers may use any facilities (*e.g.*, IntelSAT satellites, U.S. separate systems satellites, U.S. satellite earth stations, submarine cable) authorized to serve the destination country. Under current procedures, carriers must obtain separate Section 214 authorizations for each country to be served. Alternatively, carriers may obtain a Section 214 authorization for a specific facility (*e.g.*, IntelSAT AOR satellite, PanamSAT, ORION 1 satellite) and the countries those facilities are authorized to serve. This procedure is cumbersome (requiring 60 to 90 days for each new Section 214 authorization), thwarts the introduction of services to new countries and limits the flexibility of carriers to select appropriate and economical facilities. In addition, carriers must obtain Section 214 authorization for each specific service, further delaying implementation of new services.

TTH strongly supports the proposed global Section 214 authority. This global authority will eliminate the unnecessary regulatory obstacles described consistent with the statutory objectives of Section 214. Section 214 seeks to protect customers of monopoly or dominant carriers from excessive rates resulting from the construction of unnecessary or duplicative facilities, and to ensure that discontinuance of service by a carrier will not leave customers without any service provider. In the competitive international telecommunications services market, carriers invest in communications facilities at their own risk based on business considerations. With numerous competing carriers, carrier customers can switch carriers rather than paying for unnecessary facilities. The regulation of specific facilities in accordance with legal requirements or treaty obligations is better performed when initially licensing a facility rather than when carriers subsequently seek to use the facility. The carriers' use of the facilities must already comply with the facility's authorization, so separate authorization is unnecessary. Similarly, authorization of each specific international service is unnecessary. Finally, the Section 214 authorization process also allows the Commission to prevent potential anticompetitive conduct carriers; since market discipline will prevent such conduct by non-dominant carriers, this use of the Section 214 process should be limited to dominant or monopoly carriers. Thus, TTH contends that the single global authorization for non-dominant carriers is consistent with the statutory objectives underlying Section 214.

Similarly, TTH supports the proposals to eliminate separate Section 214 applications to obtain capacity from private satellite and cable systems and conveyance of cable capacity.

III. Global Section 214 Resale Authorizations

TTH also agrees with the single Section 214 international resale authorization. This proposal enables resale carriers to resell tariffs filed by new international carriers and new tariffs by existing international carriers without the delays inherent in obtaining additional Section 214 authorization. Resellers thus will have greater flexibility to select carriers and tariffs. thereby magnifying the competitive impact of lower prices and higher quality services. However, TTH observes that resellers affiliated with a U.S. facilities-based carrier are not entitled to streamlined processing of their Section 214 applications. This restriction is inappropriate when the U.S. facilities-based carrier is non-dominant. First, non-dominant carriers lack sufficient market power for effective anticompetitive conduct. Second, the affiliated reseller is purchasing services pursuant to a tariff or contract filed with the Commission. Thus, any competing reseller may purchase the affiliated carriers' services on the same terms and conditions. Third, the affiliated carrier still must fulfill its Title II common carrier obligations, such as furnishing service upon reasonable request (§ 201(a)) and non-discrimination (§ 202(a)). For non-dominant carriers, the Title II obligations, enforceable through the Section 207 complaint process, will preclude discrimination and anticompetitive harms. Fourth, under this restriction, the affiliated facilities-based carrier would receive streamlined processing of its Section 214 authorization but the reseller would be ineligible for streamlined processing. This inconsistency can be resolved by limiting this restriction to affiliations with dominant U.S. facilities-based carriers.

IV. Streamlined Processing of Section 214 Applications

The proposed streamlined processing of these global Section 214 authorizations for non-dominant carriers and resellers is necessary and appropriate. Although the global authorization will reduce the number of Section 214 applications that the Commission must process, streamlined processing is necessary to reduce the delays in implementing service. As explained above, competitive forces will effectuate the statutory objectives of Section 214, so the authorization process should primarily involve notification to the Commission and the public that the carrier will offer international services. The proposed streamlined processing will greatly reduce regulatory delays while preserving the ability of the Commission and the public to scrutinize specific applications. Consequently, streamlined processing will enable the Commission to concentrate on those applications that truly raise Section 214 concerns.

TTH also agrees with the streamlined provisions for notices of discontinuances. The increase in the number of international carriers and competition in international services means that customers can switch to another international carrier if service is discontinued. Thus, the only necessary restrictions on retiring, discontinuing, reducing or impairing service are sufficient notice to the Commission and customers. The sixty day notification period provides sufficient notice for customers to find an alternative carrier.

V. Form and Content of Section 214 Applications

The *NPRM* proposes separate requirements for international Section 214 applications. The proposed rule eliminates unnecessary information currently required in Section 214 applications. Factors such as demand, cost, service quality, route diversity, present and future revenue requirements, map routes, and financial ability are unnecessary, particularly for non-dominant carriers or resellers. Since carriers invest in communications facilities at their own risk based on business considerations, rather than captive ratepayers financing such facilities, such information is unnecessary; moreover, requiring carriers to disclose confidential financial information may inhibit them from constructing new facilities. TTH supports this simplified application, as well as giving carriers an <u>option</u> to file applications on diskette.

TTH agrees that listing the conditions on international Section 214 authorizations in a single rule that is referenced in the public notices will make it easier for carriers to ascertain the terms of their Section 214 authorizations.

VI. Simplification of Tariff Filings

TTH advocates streamlining tariff requirements for international carriers. The current requirements reduce the flexibility of non-dominant carriers to adjust their rates based on competitive conditions. Adoption of the standards currently applied to non-dominant domestic carriers would simplify tariffing requirements and provide uniform tariffing procedures for non-dominant carriers.

VII. Conclusion

TTH supports the *NPRM* proposals to simplify the Section 214 authorization process for non-dominant carriers. Section 214 protects customers of monopoly or dominant carriers from excessive rates resulting from the construction of unnecessary or redundant facilities, protects against abrupt discontinuances of services, prevents dominant or monopoly carrier from exploiting control of bottleneck facilities for anticompetitive objectives, and ensure that facilities conform to applicable legal requirements In a competitive market with numerous providers, such as international telecommunications, non-dominant carriers cannot leverage bottleneck facilities for competitive advantage nor compel captive ratepayers to subsidize unnecessary or redundant facilities. Thus their activities do not implicate the policy concerns underlying Section 214; extensive regulation is unnecessary because market forces will discipline abusive conduct. The current Section 214 authorization process imposes significant market entry barriers on non-dominant carriers, and thereby delay competition and protect incumbent providers without corresponding public benefits. The *NPRM* proposals eliminate these artificial barriers and enhance competitive forces in the international telecommunications market. In addition, this simplification of enables the Commission to focus its time and resources on situations that truly implicate the statutory objectives of Section 214.

Respectfully submitted,

TELEPORT TRANSMISSION HOLDINGS, INC.

August 23, 1995

By: ______________________

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